

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

MARTIN MANZO-GONZALEZ,	)	No. CV-F-04-6094 OWW
	)	(Nos. CR-F-03-5239 OWW; CR-
	)	F-03-5240 OWW)
	)	
Petitioner,	)	ORDER GRANTING MOTION TO
	)	VACATE, SET ASIDE OR CORRECT
vs.	)	SENTENCE PURSUANT TO 28
	)	U.S.C. § 2255, VACATING
	)	SENTENCE, DIRECTING FEDERAL
UNITED STATES OF AMERICA,	)	DEFENDER TO APPOINT COUNSEL,
	)	AND DIRECTING U.S. MARSHAL
	)	TO RETURN PETITIONER FOR RE-
Respondent.	)	SENTENCING ON MONDAY,
	)	DECEMBER 4, 2006 AT 10:00
	)	A.M. IN COURTROOM 7

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On August 13, 2004, petitioner Martin Manzo-Gonzalez filed a timely motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

Petitioner was charged in No. CR-F-03-5239 with being a deported alien found in the United States in violation of 8 U.S.C. § 1326. Petitioner was charged in No. CR-F-03-5240 with one count of conspiracy to possess and distribute a listed

chemical, pseudoephedrine, knowing that the pseudoephedrine would be used to manufacture a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 846; and three counts of distribution of methamphetamine in violation of 21 U.S.C. § 841(a)(1).

Petitioner was represented in both cases by Steven Crawford. On October 24, 2003, by written Plea Agreement, petitioner pleaded guilty to being a deported alien found in the United States and to one count of distribution of methamphetamine. The Plea Agreement provided in pertinent part:

**IV. Joint agreements between the parties.**

The parties stipulate that the drug quantity attributable to the defendant's offense of conviction and its relevant conduct is the methamphetamine distributed by the defendant on May 13, 21, and 28, 2003 as alleged in Indictment No. Cr.F 03-5240; more specifically approximately 127 grams (gross weight) of a mixture or substance containing methamphetamine. The parties stipulate and agree to substitute the net weight (gross weight reduced by any packaging weight) if that net weight is lower than 127 grams.

...

**VI. Factual Basis for Plea Agreement.**

The defendant will plead guilty because he is in fact guilty of the crimes to which he will admit guilt. The defendant also agrees that his guilty plea will be based upon the following facts, although he acknowledges that, as to other facts, the parties may disagree.

...

Defendant further agrees that the following are true and correct facts as to case CrF 03-5240 OWW:

1 On or about May 13, 2003 in the  
2 County of Merced, State and Eastern  
3 District of California, defendant  
4 Martin Manzo Gonzalez distributed  
5 methamphetamine to another person  
6 or persons. The amount distributed  
7 was more than fifty (50) grams of a  
8 mixture or substance containing  
9 methamphetamine. At all relevant  
10 times, defendant Martin Manzo  
11 Gonzalez knew he was distributing  
12 methamphetamine and that  
13 methamphetamine is a controlled  
14 substance.

15 Petitioner was sentenced on January 12, 2004 in both cases to 120  
16 months, to run concurrently, and a 60 month term of supervised  
17 release. Petitioner did not file a notice of appeal.

18 In moving for relief pursuant to Section 2255, petitioner  
19 asserts the following claims:

20 1. Whether counsel was ineffective for  
21 failing to object to the sentence on the  
22 ground that the Sentencing Guidelines and  
23 procedures used to determine the sentencing  
24 facts were unconstitutional under *Apprendi v.*  
25 *New Jersey*.

26 2. Whether counsel was ineffective because  
of "lack of research and investigation of the  
law of Blakely upon failure to notice Blakely  
future impact which was granted certiorari  
during the petitioner's proceedings".

3. Whether counsel's "failure to pursue  
and/or notice his client of what the law of  
*Apprendi* was render the plea of guilty as  
void upon lack of information regarding the  
quantity as element of the offense before the  
entry of plea of guilty."

4. Whether petitioner's "direct appeal  
waiver was unknowingly and unvoluntarily  
[sic] made but procured through counsel  
constitutionally ineffective during the  
negotiations upon lack of investigation of  
the case as a whole".

1           5. Whether the guilty plea "was involuntary  
2           and unknowing [sic] upon counsel ineffective  
3           assistance pursuant lack [sic] of knowledge  
          of the law in reference to the facts of the  
          case in violation of movant due process".

4           6. Whether the direct appeal waiver "was  
5           unknowingly and unintellignet [sic] and  
6           unvoluntarily [sic] made due to counsel  
7           ignored request from his client to files  
8           [sic] a notice of appeal and direct appeal  
          acknowledged actually the petitioner's  
          sentence is illegal which doesn't include a  
          waiver of one illegal sentence under the  
          facts of the present case".

9           7. Whether counsel was ineffective "upon  
10          lack of objection and contention that the  
11          government did not proved [sic] the  
12          quantities of methamphetamine which movant's  
13          [sic] admitted to were 'actual  
14          methamphetamine' as opposed to a mixture  
          containing methamphetamine for sentencing  
          purposes and whether it was an [sic]  
          defendant or government burden for sentencing  
          designs".

15          8. Whether petitioner's guilty plea "was  
16          affected as consequence of government  
17          Brady/Giglio/Agurs violations before the  
          entry of plea of guilty and due to counsel  
          [sic] lack of investigation and consultation  
          with his client".

18          9. Whether petitioner "was entitled to  
19          manipulation or sentencing entrapment  
20          contention and was deprived due to counsel  
          lack of investigation and government  
          disclosure violations".

21           In responding to this motion, the United States concedes  
22           that petitioner is entitled to relief with respect to his claim  
23           no. 7 above that he was improperly sentenced to the mandatory  
24           minimum of ten years imprisonment based on the distribution of  
25  
26

1 127 grams of a mixture or substance containing methamphetamine.<sup>1</sup>

2 Because of this concession, resolution of the other grounds  
3 for relief asserted in the motion is not necessary. When  
4 petitioner is returned for re-sentencing, counsel for petitioner  
5 may raise any issues deemed appropriate at that time.

6 ACCORDINGLY, as set forth above:

7 1. Petitioner Martin Manzo-Gonzalez's petition to vacate,  
8 set aside or correct sentence pursuant to 28 U.S.C. § 2255 is  
9 GRANTED and Petitioner's sentence is VACATED.

10 2. The Federal Defender is ordered to appoint counsel to  
11 represent petitioner.

12 3. The U.S. Marshal is ordered to return petitioner to the  
13 Eastern District of California, Fresno, for re-sentencing in  
14 Courtroom 7 on Monday, December 4, 2006 at 10:00 a.m.

15 IT IS SO ORDERED.

16 **Dated: October 13, 2006**  
668554

**/s/ Oliver W. Wanger**  
UNITED STATES DISTRICT JUDGE

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23 <sup>1</sup>21 U.S.C. § 841(b)(1)(A)(viii) imposes a mandatory minimum  
24 sentence of ten years for the distribution of "500 grams or more of  
a mixture or substance containing a detectable amount of  
methamphetamine ...". Section 841(b)(1)(B)(viii) imposes a  
25 mandatory minimum sentence of five years for the distribution of  
"50 grams or more of a mixture or substance containing a detectable  
26 amount of methamphetamine."